Hii Heng Tuong Alphonsus v Lok Min Wah & Ors

HIGH COURT (KUCHING) — SUIT NO KG 116 OF 1994(II)
ABDUL KADIR SULAIMAN J
21 JULY 1995

Civil Procedure *— Pleadings — Striking out — Whether plaintiff commenced action by wrong procedure — Whether plaintiff proper party*

Companies and Corporations *— Director — Director not given notice of board meeting — Expulsion as director without authority — Whether a wrong done to company or wrong done personally to director — Validity of appointment of secretary at board meeting conducted in director's absence*

The plaintiff was a director of the third defendant company ('the company'). The first and second defendants were shareholders and directors of the company since its incorporation in 1982. On or about 26 October 1994, the plaintiff was served with a notice of extraordinary general meeting of the company to be held on 29 November 1994. It was issued pursuant to an order of the board of directors made at a board meeting on 24 October 1994 by a secretary of the company. The plaintiff, however, was not served or given notice of the purported board meeting deciding on the holding of the extraordinary general meeting. He argued that any resolutions, decisions or orders made at the board meeting were unlawful and therefore null and void. The plaintiff also challenged the validity of the appointment of the secretary. The plaintiff further contended that he was not given any notice of annual general meeting which was purportedly convened on 31 December 1993 and that he never retired as a director as alleged.

The defendants applied to strike out the plaintiff's pleadings under O 18 r 19(1) of the Rules of the High Court 1980 ('RHC') and under the inherent jurisdiction of the court by virtue of O 92 r 4 of the RHC. The defendants further contended that as the plaintiff's action was in respect of a wrong done to the company, the proper plaintiff ought to have been the company and that the action ought to have been commenced by way of a petition instead of a writ of summons. It was therefore the contention of the defendants that the plaintiff commenced the action by a wrong procedure and that the plaintiff had no locus standi to institute the action against the defendants.

Held, dismissing the defendants' application:

(1) The plaintiff's grievance as stated in his pleadings was that he never retired as a director of the company as contained in Form 49 dated 7 January 1994 filed with the Registrar of Companies. If the plaintiff was right, it was not a wrong done to the company as contended by the defendants. It was a

wrong done to him personally of having been thrown out of the directorship of the company without proper authority. In such circumstances, the plaintiff could sue alone in his personal capacity and might restrain the company and other directors from doing such act to him.

(2) The plaintiff alleged that he was unaware of the board of directors' meeting held on 24 October 1994 authorizing the extraordinary general meeting scheduled to be held on 29 November 1994. If the plaintiff was right in saying that he never ceased to be a director of the company at the material time, he ought to have been informed of the board of directors' meeting. The failure to do so was again an allegation of wrong done to him personally.

(3) The plaintiff challenged the appointment of the secretary of the company as the appointment was based on the resolution of the directors at a board meeting which he was unaware of. This issue, though in connection with a wrong done to the company, was related to his expulsion as a director of the company resulting in him not being notified of the board meeting which decided on the appointment of the secretary.

(4) Considering the pleadings as a whole, the court was satisfied that the plaintiff adopted a proper procedure in instituting the action by way of a writ of summons for declaration and injunction and that he was the proper plaintiff in the action.

(5) In light of the defendants' contention and on the face of the plaintiff's statement of claim, the defendants failed to establish that the plaintiff's statement of claim disclosed no reasonable cause of action under O 18 r 19(1)(a) of the RHC.

(6) On the grounds under O 18 r 19(1)(b) to (1)(d) and under the inherent jurisdiction of the court, evidence by affidavits was admissible to determine whether the pleadings ought to be struck out. Judging from the various affidavits filed, there appeared to be serious conflicts in the evidence both for and against the plaintiff. These conflicts could be resolved only at the full trial of the action by the oral evidence of all parties. In that sense, the plaintiff's claim could not be said to fall under any of the grounds under O 18 r 19 or under O 92 r 4 of the RHC which entitled the defendants to strike out the plaintiff's pleadings.

[Bahasa Malaysia summary

Plaintif adalah seorang pengarah dalam defendan ketiga ('syarikat itu'). Defendan pertama dan kedua adalah pemegang saham syarikat itu semenjak pemerbadanannya dalam tahun 1982. Pada atau kira-kira pada 26 Oktober 1994, plaintif telah disampaikan satu notis mesyuarat am luarbiasa syarikat itu yang akan diadakan pada 29 November 1994. Ianya telah diisu menurut satu perintah

lembaga pengarah yang dibuat di satu mesyuarat lembaga pada 24 Oktober 1994 oleh seorang setiausaha syarikat itu. Plaintif, namun demikian, tidak disampaikan atau diberikan notis mesyuarat lembaga yang dikatakan telah membuat keputusan mengadakan mesyuarat am luarbiasa itu. Beliau berkata bahawa sebarang resolusi, keputusan atau perintah yang dibuat di mesyuarat lembaga itu adalah tidak sah di sisi undang-undang dan oleh itu batal dan tak sah. Plaintif juga mencabar kesahan perlantikan setiausaha itu. Plaintif selanjutnya mengatakan bahawa beliau tidak diberikan sebarang notis mesyuarat am tahunan yang dikatakan telah diadakan pada 31 Disember 1993 dan bahawa beliau tidak pernah bersara dari jawatan pengarah seperti yang dikatakan.

Defendan memohon untuk membatalkan pliding plaintif di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dan di bawah bidang kuasa sedia ada mahkamah mengikut A 92 k 4 KMT. Defendan selanjutnya mengatakan bahawa memandangkan bahawa tindakan plaintif adalah bersangkutan dengan satu kesalahan yang dilakukan ke atas syarikat itu, plaintif yang sepatutnya membawa tindakan adalah syarikat itu dan tindakan itu seharusnya dimulakan melalui satu petisyen dan bukan writ saman. Oleh itu hujah defendan adalah bahawa plaintif telah memulakan tindakan ini menerusi prosedur yang salah dan bahawa plaintif tidak mempunyai locus standi untuk memulakan tindakan ini terhadap defendan.

Diputuskan, menolak permohonan defendan:

(1) Kilanan plaintif seperti yang dinyatakan di dalam plidingnya adalah beliau tidak pernah bersara dari jawatan pengarah syarikat itu seperti yang terkandung di dalam Borang 49 bertarikh 7 Januari 1994 yang difailkan dengan Pendaftar Syarikat. Jika plaintif betul, ini bukanlah satu kesalahan yang dilakukan ke atas syarikat itu seperti yang dikatakan oleh defendan. Ianya adalah satu kesalahan yang dilakukan ke atas plaintif sendiri kerana dikeluarkan dari jawatan pengarah syarikat itu tanpa kuasa yang patut. Dalam keadaan sedemikian, plaintif boleh membawa tindakan sendiri dalam kedudukan dirinya dan boleh menyekat syarikat dan pengarah-pengarah lain daripada melakukan tindakan sedemikian ke atasnya.

(2) Plaintif mengatakan bahawa beliau tidak tahu tentang mesyuarat lembaga pengarah yang diadakan pada 24 Oktober 1994 yang memberikuasa kepada mesyuarat am luarbiasa yang akan diadakan pada 29 November 1994. Jika plaintif betul apabila beliau mengatakan bahawa beliau tidak berhenti menjadi pengarah syarikat itu pada masa yang berkenaan, beliau sepatutnya diberitahu tentang mesyuarat lembaga pengarah itu. Kegagalan membuat demikian adalah pengataan kesalahan yang telah dilakukan ke atasnya sendiri.

(3) Plaintif mencabar perlantikan setiausaha syarikat itu kerana perlantikan itu berdasarkan resolusi pengarah di suatu mesyuarat lembaga yang tidak diketahuinya. Isu ini, walaupun bersangkutan dengan satu kesalahan yang dilakukan ke atas syarikat itu, adalah berkenaan dengan pemecatannya sebagai seorang pengarah syarikat yang berkesudahan dengan beliau tidak diberitahu tentang mesyuarat lembaga yang membuat keputusan melantik setiausaha itu.

(4) Mempertimbangkan pliding itu secara keseluruhan, mahkamah berpuashati bahawa plaintif telah menggunakan prosedur yang berpatutan ketika memulakan tindakan ini menerusi writ saman untuk deklarasi dan injunksi dan bahawa beliau adalah plaintif yang betul di dalam tindakan ini.

(5) Memandangkan hujah defendan dan pada muka pernyataan tuntutan plaintif, defendan telah gagal menunjukkan bahawa pernyataan tuntutan plaintif tidak menimbulkan kausa tindakan yang munasabah di bawah A 18 k 19(1)(a) KMT.

(6) Mengikut alasan di bawah A 18 k 19(1)(b) hingga (1)(d) KMT dan di bawah bidang kuasa sedia ada mahkamah, keterangan melalui afidavit boleh diterima untuk menentukan sama ada pliding itu patut dibatalkan. Melihat afidavit-afidavit yang difailkan, nampaknya terdapat percanggahan serius di dalam keterangan untuk dan terhadap plaintif. Percanggahan ini hanya boleh diselesaikan di perbicaraan penuh tindakan ini melalui keterangan lisan oleh kesemua pihak. Dari segi itu, tuntutan plaintif tidak boleh dikatakan jatuh di bawah mana-mana alasan di bawah A 18 k 19 atau di bawah A 92 k 4 KMT yang memberi hak kepada defendan untuk membatalkan pliding plaintif.]

Notes

For cases on striking out of pleadings, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue), paras 2711–2768.

For cases on directors and meetings, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue), paras 99–100 and 164.

Cases referred to

Burland v Earle [1902] AC 83 (refd)

Daniels & Ors v Daniels & Ors [1978] Ch 406; [1978] 2 WLR 73; [1978] 2 All ER 89 (refd)

Foss v Harbottle (1843) 2 Hare 461 (refd)

Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536 (folld)

Kerr v John Mottram Ltd [1940] 2 All ER 629 refd)

Pavlides v Jensen [1956] Ch 565; [1956] 3 WLR 224; [1956] 2 All ER 518 (refd)

Legislation referred to

Rules of the High Court 1980 O 15 r 16, O 18 r 19(1), O 88 r 5(h), O 92 r 4
Companies Act 1965 s 156

Albert Tang (*Chew Jugah Wan Ulok & Co*) for the plaintiff.
Chong Siew Chiang (*Chong Brothers*) for the defendants.

Cur Adv Vult

Abdul Kadir Sulaiman J: This is the judgment in respect of the application of the defendants under O 18 r 19(1) of the Rules of the High Court 1980 (hereinafter referred to as 'the RHC') and under the inherent jurisdiction of the court which is O 92 r 4 of the RHC. Further grounds are as contained in the affidavit in support of the defendants which avers that the plaintiff has commenced the action by a wrong procedure and that the plaintiff has no locus standi to institute this action against the defendants. It is the contention of the defendants that the action ought to have been commenced by a petition instead of by way of a writ of summons and that as the action of the plaintiff is in respect of a wrong done to the company, the proper plaintiff ought to be the company and in the circumstances, the plaintiff has no locus standi to pursue the action against the defendants.

So, before I deal with the merit of O 18 r 19 and O 92 r 4 of the RHC, I would like first to dispose of the objection of the defendants mentioned above on the basis of adopting a wrong procedure to institute the action and the locus standi of the plaintiff. The plaintiff commenced this action by writ of summons praying for various declarations and injunction and costs. The defendants say that it ought to have been commenced by petition pursuant to O 88 r 5(h) of the RHC as it concerns the wrong done to the company which is the third defendant and not to the plaintiff.

According to the plaintiff's re-amended statement of claim it is averred that he and the first and second defendants are shareholders and directors of the third defendant company since its incorporation on 20 May 1982. On or about 26 October 1994 he was served with a notice of extraordinary general meeting of the company to be held on 29 November 1994. It was issued by one Sim Boon Chuan purportedly the secretary of the company to be pursuant to an order of the board of directors made at the board's meeting on 24 October 1994. The plaintiff being a director has, however, not been served or given notice of the purported board's meeting deciding on the holding of the said extraordinary general meeting. As such he avers that any resolutions or decisions or order made at the said board meeting and for that matter any or all of the purported board's meeting in which no proper notice was given to him are unlawful null and void. He further avers that he was unaware of the appointment of the said secretary as he has never

been served or given notice nor was he present at the board's meeting which passed the resolution or made the decision to appoint the said secretary of the company. Thus, he contends that the purported appointment of the said secretary is unlawful null and void as well. It follows therefore, that the said secretary had no power or authority to convene the said extraordinary general meeting scheduled to be held on 29 November 1994 or to issue the said notice of the meeting. By a letter to the defendants dated 28 November 1994 he protested over the propriety of the said intended extraordinary general meeting proposed to be held on 29 November 1994. His averment goes on to say that despite the said letter of protest, the defendants proceeded with the said extraordinary general meeting on the appointed date and passed the resolutions to sell the company's shophouse for RM450,000 and the company's motor vehicle No KT 698 to the first defendant for RM50,000 and the defendants now threaten to implement the aforesaid resolution unless restrained by the court. He further avers that if the company's assets are dealt with, it will cause irreparable damage to his rights and interests and will also cause inconvenience to third parties. On 7 December 1994 he made a search at the Registry of Companies and discovered that the second defendant had submitted a Form 49 dated 7 January 1994 purportedly to state that he had retired as a director on 31 December 1993, to which he denied. He lastly avers that he was not given any notice of annual general meeting that was purportedly convened on 31 December 1993 and that he never retired as a director as alleged. Upon the above averments, he claims against the defendants for:

(a) a declaration that the board of directors' meeting of the third defendant company held on 24 October 1994 and all other purported board of directors' meeting in which no proper notice was given to him, and all proceedings therein are unlawful and any or all resolutions or any order passed or any decision made therein is or are unlawful null and void;

(b) a declaration that the extraordinary general meeting of the third defendant held on 29 November 1994 is improperly convened, unlawful null and void;

(c) an injunction restraining the third defendant by itself, its servants, agents or otherwise howsoever from selling or disposing or in any way deal with the two aforesaid items of property of the company, or in any way implementing any resolutions passed at the purported extraordinary general meeting of the company held on 29 November 1994 until the final determination, disposal or conclusion of this action or until further orders;

(d) a declaration that he never retired as a director on 31 December 1993 and that the purported annual general meeting on 31 December 1993 or any other annual general meeting in which no proper notice was given to him was invalid null and void.

(e) costs and any other reliefs this court deems fit and just.

A Thus, looking at the pleadings of the plaintiff, his grievance is that firstly, he never retired as a director of the third defendant company as contained in Form 49 dated 7 January 1994 filed with the Registrar of Companies. If he is right, then clearly it is not a wrong done to the company as contended by the defendants. It is a wrong done to him personally of having been thrown out of the directorship of the company B without proper authority. This act, if proved, amounts to an act which is illegal or ultra vires the company, and which a majority are consequently unable to affirm. In such circumstances, a single shareholder, like the plaintiff, can sue alone in his personal capacity and may restrain the company and the other directors from doing such C act to him. It is not a matter of internal management of the company done within its powers, with which, on the principle stated in *Foss v Harbottle* (1843) 2 Hare 461 the court normally will not interfere. It is an exception to that principle. In *Burland v Earle* [1902] AC 83, Lord Davey in the Privy Council at p 93 says:

D > It is an elementary principle of the law relating to joint stock companies that the court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so.

If the defendants contend otherwise, the matter becomes a triable issue at the full trial of the action. Therefore, it is not proper at this stage of E the proceedings for the court to have the pleadings struck out on the ground that the plaintiff has no locus standi to sue.

Secondly, the plaintiff is alleging that he was unaware of the board of directors' meeting held on 24 October 1994 authorising the extraordinary general meeting scheduled to be held on 29 November 1994. If he is again right in saying that he never ceased to be a director F of the third defendant company at the material time, he ought to have been informed of the said board of directors' meeting which he alleged that he has not been served or given notice of the purported board's meeting deciding on the said extraordinary general meeting. This clearly is again an allegation of wrong done to him personally. If he remains a G director, he ought to have been served or given notice of the purported board's meeting. Thirdly, he challenges the appointment of Sim Boon Chuan as the secretary of the company, as according to him the appointment is to be based on the resolution of the directors at a board meeting which he was unaware of. This issue, though in connection with a wrong done to the company but it is related to his expulsion as H a director of the company resulting in him not being notified of the board meeting deciding on the appointment of the secretary. Fourthly, it also relates to his alleged expulsion from the board, and he challenges the decision of the company to hold the extraordinary general meeting of 29 November 1994 on account of his absence from the board's I meeting resolving to hold such extraordinary general meeting. Fifthly, he challenges the decision arrived at the said extraordinary general meeting disposing off the company's properties for the lack of proper authority to do so it being not properly convened on account of his absence from the board meeting. Since it was decided at the said

impugned extraordinary meeting as to the disposal of the company's properties, he seeks an injunction to stop the implementation of the decision so made. So, considering the pleadings as a whole, I am satisfied that the plaintiff has adopted a proper procedure in instituting the action by way of a writ of summons for declarations and injunction and that he is the proper plaintiff in the action. It does not follow that because he is a minority shareholder he must institute the action by way of a petition under O 88 r 5 of the RHC only. The jurisdiction of the court to make a declaration under O 15 r 16 of the RHC is not confined to cases in which the plaintiff has a complete and subsisting cause of action apart from the rule, or, in which the plaintiff also seeks relief apart from the declaration: *Guaranty Trust Co of New York v Hannay* [1915] 2 KB 536 (CA). A declaration can be resorted to ascertain and determine the rights of parties or to determine a point of law. See *Mallal's Supreme Court Practice* (2nd Ed) at p 143. At this stage of the proceedings there is no defence as yet filed by the defendant. In the circumstances, the court has to assume that the pleadings contained in the plaintiff's statement of claim is true.

Having disposed of the issue of the procedure to institute the action and the locus standi of the plaintiff, I will now deal with the merits of the application of the defendants for the striking out of the pleadings of the plaintiff.

For an application under O 18 r 19 on ground (1)(a) no evidence except the impugned pleadings is to be considered by the court — in this case the plaintiff's statement of claim. The learned counsel for the defendants submitted that the pleadings are defective particularly prayer (b) of the statement of claim praying for a declaration that the extraordinary general meeting of the third defendant company held on 29 November 1994 was improperly convened, unlawful, null and void. This allegation of the plaintiff is on the basis that he was not being involved in the board of director's meeting making the decision to hold such extraordinary general meeting. The reason for his absence was because he was treated by the defendants as having resigned from the directorship on 31 December 1993, which he denies as so averred in his statement of claim. The plaintiff also disputes the authority of Sim Boon Chuan, the purported secretary of the company issuing the said notice of the extraordinary meeting when he was not involved in the appointment of the said secretary for the reason that he was not made aware of the board meeting agreeing to such appointment. If the plaintiff was right in saying that he did not resign as a director, then he ought to have been served or given the notices for the holding of such of the director's meetings. The learned counsel for the defendants argues that the appointment of the secretary was properly minuted and had been officially and properly submitted to the Registrar of Companies. He cited s 156 of the Companies Act 1965 and the case of *Kerr v John Mottram Ltd* [1940] All ER 629 as authority for saying that the minute is conclusive unless set aside upon allegation of fraud. I agree that it should be so, provided that there was a proper meeting held. In this

A case the plaintiff is challenging on the impropriety of the various meetings held during his absence on account of him being treated by the defendants as having resigned from his directorship of the company, to which he denies. No doubt in the pleadings the plaintiff does not directly pray for the appointment of the secretary to be declared null and void and he was not made a party to the action, but the central B issue is that the plaintiff claims that he never retired on 31 December 1993 as a director as contended by the defendants and as such he is entitled to participate in the management of the company, including the decision to appoint a secretary of the company. The learned counsel also cited two other authorities, ie *Daniels & Ors v Daniels & Ors* C [1978] Ch 406; [1978] 2 WLR 73; [1978] 2 All ER 89 and *Pavlides v Jensen* [1956] Ch 565; [1956] 3 WLR 224; [1956] 2 All ER 518 in support of his contention. In my view these two authorities are of no relevance at all because the actions there were minority shareholders' action against the directors, but this action of the plaintiff is not of the kind. In the circumstances, I see no merit at all in the contention of the D defendants and on the face of the statement of claim of the plaintiff, the defendants have failed to establish that the statement of claim of the plaintiff discloses no reasonable cause of action under ground (a) of O 18 r 19(1)(a) of the RHC.

On grounds (1)(b) to (d) of O 18 r 19 and under the inherent E jurisdiction of the court, evidence by affidavits is admissible to determine whether the pleadings ought to be struck out. This application of the defendants is supported by the affidavit of Lok Min Wah, the first defendant, affirmed on 20 December 1994. He avers that he is the manager, assistant secretary as well as director of the third defendant holding 20,000 shares as against the plaintiff's 15,000 shares. The F other shareholders are the second defendant holding 15,000 shares and one Hii Yeu King, the son of the plaintiff, the balance of 15,000 shares.

The first defendant further deposed that before 31 December 1993, in an informal meeting of the third defendant company, the plaintiff indicated to him in the presence of the second defendant, his G mother, that the plaintiff would like to retire as a director and resign as manager of the company on the ground that he did not take active part in the management of the business of the company. This verbal retirement as manager and director of the plaintiff was accepted at the annual general meeting of the company held on 31 December 1993 H wherein the first and second defendants and one Hii Yeu Kiong, the other shareholder, were re-elected as directors of the company for the ensuing year and the first defendant was appointed manager and assistant secretary of the company. Exhibit 'LMW2' is a copy of the minutes of the said annual general meeting.

I On 6 May 1994 a board of director's meeting was held and attended by the first and second defendant and the said Hii Yeu Kiong. It was resolved, inter alia, that the aforesaid Sim Boon Chuan be appointed the secretary of the company with effect from 7 May 1994. The said meeting was held pursuant to a notice dated 3 May 1994 a

copy of which is exhibited as 'LMW3B'. A copy of the said resolution passed and the attendance list are exhibited as 'LMW 3' and 'LMW 3A'.

On 24 October 1994 another board of director's meeting of the company was held and attended by the first and second defendants and the said Hii Yeu Kiong. At the meeting it was resolved that:

(i) the shophouse described as lot 2119 Block 4 Miri Concession Land District owned by the third defendant be sold for RM450,000; and

(ii) the car being registration plate No KT 698 be disposed of to the first defendant at RM50,000 for setting off the debt due to her.

In the said meeting, the second defendant proposed that an extraordinary general meeting of the company be held on 29 November 1994 for shareholders to consider and if think fit, approve both the aforesaid resolutions of the board and the said proposal was seconded by the deponent without any objection from Hii Yeu Kiong. A copy of the minutes of the said directors' meeting is exhibited as 'LMW4'

On 24 October 1994 a notice of an extraordinary general meeting scheduled to be held on 29 November 1994 was sent out to all the shareholders of the company. The said extraordinary general meeting was held as scheduled and it was resolved that the company's shophouse be sold to one Ong Hua Kuo for RM450,000 and that the motorcar be disposed off to the first defendant for RM50,000 to set off the account due to her. A copy of the minutes of the said extraordinary general meeting is exhibited as 'LMW6'. It is also averred that the object of the sale of the said land is with a view to reducing the heavy indebtedness and financial burden of the company.

On 28 December 1994 the defendants filed another affidavit through the second defendant affirmed on the same date. In the main the affidavit repeats the aforesaid affidavit of the first defendant except as to the averment that prior to the appointment of Sim Boon Chuan as the secretary on 6 May 1994, Hii Yeu Kiong acted as a secretary in contravention of s 139A of the Companies Act 1965 and was compounded by the Registrar of Companies on 13 September 1994 for the contravention. Hence the appointment of Sim Boon Chuan to replace him. The said affidavit further deposes that *the plaintiff is not entitled to a notice of any board of director's meeting since the date of his ceasure to be the director effective on 1 January 1994 pursuant to the acceptance by the annual general meeting of 31 December 1993 of his verbal retirement as such and the resignation as the manager of the company.*

In the plaintiff's affidavit affirmed on 16 January 1995 he denied having indicated at any informal meeting to the first and second defendants that he intended to retire as a director of the company. He averred that the allegation is a fabrication in order to justify their holding out to the Registrar of Companies that he had retired as such on 31 December 1993 by filing the Form 49 lodged by the first defendant

on 7 January 1994 with the Registrar. To support his contention he exhibited as 'AH9' an affidavit of the second defendant affirmed on 11 April 1994 in Originating Summons No KG 65 of 1994/II between the defendants and Michael Hii Yeu Kiong as plaintiff wherein at para 4 it was deposed by the second defendant thus:

> 4 During an informal meeting held on *13 January 1993* at about 8pm, the deponent Hii Heng Tuong (the plaintiff in this present proceedings) made known to me that the reason why he did not attend the extraordinary general meeting held on *2 December 1993* was because he wanted to resign as he said that he was never been involved in the active management of the third defendant company in the first place. [Emphasis is mine.]

Also in respect of the same proceedings, the son of the second defendant and who is also the brother of the first defendant by the name of Lok How Heong affirmed an affidavit on the same date (exh 'AH 10'), and at paras 3 and 4 the deponent deposed thus:

> 3 During an informal meeting held on *13 January 1993* at about 8pm at the office of the third defendant company, I was invited by the chairman of the board of directors of the third defendant company to have an informal discussion pertaining to the further running of the third defendant company which had financing facilities secured against properties of my mother, the chairman of the board of directors.
>
> 4 The said deponent Hii Heng Tuong (the present plaintiff) in the presence of the chairman of the board of directors and in my presence indicated in unequivocal terms that he did not seek re-election as the director of the third defendant company as he was never actively involved in the third defendant company's activities in the first place. [Emphasis is mine.]

The plaintiff avers that as the purported informal meeting took place before the general meeting on 31 December 1993, the depositions in the two said affidavits cannot be true. Firstly, the second defendant was referring to an extraordinary general meeting held on 2 December 1993 and not in respect of 31 December 1993. Secondly, the informal meeting could not have taken place before the stated extraordinary general meeting giving reason for the plaintiff's absence at the said general meeting. As to the annual general meeting of 31 December 1993, he as a shareholder did not receive any notice calling for same. He was also not given any notice to attend any board of directors' meeting in which it was resolved by the directors to call for the purported annual general meeting on 31 December 1993. He exhibited 'AH11' being minutes of the annual general meeting held on 2 December 1993 wherein it was resolved that the resignation of the plaintiff as manager of the company be accepted. Be it noted that in her affidavit of 28 December 1994 dealt with above, the second defendant exhibited 'KM1' which purports to be minutes of the said annual general meeting held on 31 December 1993. This 'KM1' of the defendants is identical to 'AH11' of the plaintiff except for the date of the holding of the said annual general meeting. According to the exhibit of the plaintiff the said meeting was

held on 2 December 1993 whereas the exhibit of the second defendant gives the date as 31 December 1993. Item 8 in both the exhibits deals with the acceptance of the resignation of the manager of the company, ie the plaintiff. Thus according to the plaintiff, as deposed in his affidavit, there was no such annual general meeting held on 31 December 1993. The plaintiff got this copy of exh 'AH11' from his son, Hii Yeu Keong (the plaintiff in Originating Summons No KG 65 of 1994/II mentioned earlier) who is one of the shareholders of the company. Both the copies of the exhibits were signed by the manager of the company by affixing the stamp of the company against the signature. The plaintiff denied ever tendering any notice in writing to retire as a director as required by the articles of association of the company. Thus he maintains that he is still the director of the company.

On 23 January 1995 the second defendant affirmed another affidavit in response to the affidavit of the plaintiff of 16 January 1995 mentioned above. In an attempt to clear the doubt as regard the allegation of the oral communication by the plaintiff of his desire to resign, the second defendant avers that this oral communication was given by the plaintiff to her and the first defendant on more than one occasion before the annual general meeting of 31 December 1993. She further alleges that the plaintiff even confirmed to her as to the correctness of his retirement as a director even shortly after the said annual general meeting. As to the date of the annual general meeting she maintains it to be on 31 December 1993 and 'AH11' was merely a draft and the date of the meeting purportedly to be on 22 December 1993 was wrongly inserted.

To this affidavit of the second defendant, the plaintiff affirmed yet another affidavit on 27 January 1995. In support of his contention that 'AH11' is not a draft he tendered another document exhibited as 'AH13' which is the attendance list of the purported annual general meeting of 22 December 1993 duly signed by the first and second defendant leaving out the name of Hii Yeu Keong unsigned. This 'AH13' is identical to the attendance list exhibited by the second defendant attached to exh 'KM1' except for the date of the meeting and against the name of Hii Yeu Keong it is recorded as 'absent'. The plaintiff maintains that the two purported annual general meetings were fictitious and he was never given any opportunity and proper notice to attend a real annual general meeting which he claims was never held. He pointed out that in neither of the two attendance lists his name appears even as a shareholder of the company. Thus judging from the various affidavits filed there appears to be serious conflicts in the evidence both for and against the plaintiff. These conflicts can be resolved only at the full trial of the action by the oral evidence of all parties. In that sense the claim of the plaintiff cannot be said to fall under any of the grounds under O 18 r 19 or under O 92 r 4 of the RHC which entitles the defendants to the prayer sought in this application. Even assuming that the purported extraordinary general meeting was held, the informal meeting had between the plaintiff and the defendants before 31st December 1993 which is oral in nature could not be the

basis for a valid resignation of the plaintiff as a director for under art 74 of the articles of association of the company (exh 'AH5' to the second affidavit of the plaintiff) the only valid resignation of the office of a director of the company is by the director tendering a notice in writing to the company. In the case of the plaintiff as admitted by the defendants, the notice if any, was only oral. Therefore, in all the circumstances of the case the application of the defendants is dismissed as it has not been shown that it could succeed under any of the grounds laid down under O 18 r 19 of the RHC or under the inherent jurisdiction of the court. The application is dismissed with costs to the plaintiff. The defendants are hereby ordered to file their defence, if any, within 14 days.

Application dismissed.

Reported by Richard Khaw